



## Migration and Refugee Division

# Guidelines on the Assessment of Credibility

*From 20 December 2017 all references to:*

- *the Department of Immigration and Border Protection (DIBP) should be read as references to the Department of Home Affairs (Home Affairs); and*
- *the Minister for Immigration and Border Protection (MIBP) should be read as references to the Minister for Home Affairs*

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## Introduction

1. All references in this document to 'tribunal' are to be read as references to the Migration and Refugee Division of the AAT.
2. This paper sets out general guidance concerning the assessment of credibility by the Migration & Refugee Division.
3. For refugee matters, the tribunal is required to consider, where relevant, the PAM3 Refugee and Humanitarian – Refugee Law Guidelines, as outlined in the Minister's Direction No.56.
4. Many cases before the tribunal require an assessment of the credibility of evidence given by an applicant or another person, and of documentary evidence.
5. The assessment of credibility in each case is a matter for the member constituting the tribunal to determine, having regard to the individual circumstances and evidence.

## Evidence and findings

6. Evidence considered by the tribunal may include written submissions, an applicant's oral evidence, oral evidence from other persons, information about conditions and laws in an applicant's country of origin, expert evidence in the form of written reports or oral evidence and documentary evidence provided by an applicant or the Department of Immigration and Border Protection (the department). Applicants for protection visas are often unable to support claims by documentary or other proof.
7. The tribunal is not bound by legal forms and technicalities or the rules of evidence.<sup>1</sup> The tribunal considers all of the evidence available in order to make the correct or preferable decision. Evidence is assessed in its entirety, not just in isolated parts.<sup>2</sup> The tribunal assesses evidence by weighing up its probative value and relevance to an applicant's claims. There is no requirement in law that evidence must be independently corroborated before it can be accepted by the tribunal.
8. The process of determining whether an applicant meets a visa criterion, including whether an applicant is a person to meets the definition of a refugee, often requires the tribunal to decide whether it accepts certain evidence and how much weight to give to that evidence. This process may involve assessing the credibility of an applicant or other persons and documentary evidence.
9. Findings made by the tribunal on credibility should be based on relevant and material facts. What is capable of being believed is not to be determined according to the Member's subjective belief or gut feeling about whether an applicant is telling the truth or not. A Member should focus on what is objectively or reasonably believable in the circumstances.

10. The tribunal should make clear and unambiguous findings as to the evidence it finds credible or not credible and provide reasons for such findings.
11. In relation to protection visa matters, if the tribunal is not able to make a confident finding that an applicant's account is not credible, it must make its assessment on the basis that it is possible, although not certain, that the applicant's account of past events is true. If, on the other hand, the tribunal is able to make confident findings as to particular events, it is not obliged to consider the possibility that its findings of fact may not be correct.<sup>3</sup> The rejection of some of the evidence on account of a lack of credibility may not lead to a rejection of an applicant's claim for a protection visa. For example, when assessing an applicant's claims as to whether they meet the definition of refugee, if an applicant is disbelieved as to his or her claims, the tribunal must still consider whether, on any other basis asserted, a well-founded fear of persecution exists.<sup>4</sup> However, the tribunal does not need rebutting evidence before it can lawfully find that a particular factual assertion made by an applicant is not made out.<sup>5</sup>
12. The tribunal considers all the material before it and is not restricted to claims and evidence considered by the primary decision-maker. If the review applicant raises new claims or presents material for the first time to the tribunal, the tribunal will consider the credibility of what has been provided, including any reasons for why it was not provided earlier in the application process. There may be good reasons why new information or claims are presented by applicants at a later stage in the application process. These reasons may include stress, anxiety, inadequate immigration advice and uncertainty about the relevance of certain information to an applicant's claims.
13. In relation to protection visa applications made on or after 14 April 2015, if an applicant raises a claim or presents evidence that was not raised or presented before the primary decision was made, and the tribunal is satisfied that the applicant does not have a reasonable explanation why the claim was not raised or the evidence was not presented before the primary decision was made, the tribunal must draw an inference unfavourable to the credibility of the claim or evidence.<sup>6</sup>

## **Tribunal hearings<sup>7</sup>**

14. Hearings are conducted in a relatively informal way and provide an opportunity for the applicant to present his or her case and for the tribunal to take oral evidence from the applicant and other persons. The tribunal generally requests that the applicant and other persons giving evidence swear an oath or make an affirmation to tell the truth. migration hearings are generally open to the public while refugee hearings must be conducted in private.
15. Applicants are best able to present their case at a hearing which respects the dignity of the applicant and is conducted in a fair and non-intimidating manner. Members are expected to prepare thoroughly for a hearing, to ask relevant and appropriate questions in a courteous, non-threatening or non-intimidating manner and to be aware of the possible barriers to communication.

16. The nature of tribunal proceedings is such that it is the Member who asks questions of the applicant and other persons giving evidence. It is appropriate that the member not only listens to what a person has to say but also tests an applicant's evidence and directs an applicant's attention to points which are adverse to his or her case and about which the applicant might wish to comment.<sup>8</sup> For example, the tribunal may ask questions about the consistency of an applicant's oral evidence with other sources of information.
17. Procedural fairness requires an applicant to be made aware of the case against him or her and to be provided with an opportunity to respond to the issues arising in his or her case. The tribunal is under a duty to ensure that an applicant has an opportunity to be heard on the issues to be decided by the tribunal.<sup>9</sup>
18. A Member should maintain, and be seen to have, an open mind when conducting a hearing. There is a duty to clearly and unambiguously raise with an applicant the critical issues upon which his or her application may depend.
19. An applicant may be plainly confronted with matters which bear adversely on his or her credit or which bring his or her account into question. However, the tribunal should take care to ensure that vigorous testing of the evidence and frank exposure of its weaknesses does not result in the applicant being overborne or intimidated.<sup>10</sup>

## Oral evidence

20. There are a number of factors or circumstances that may affect an applicant's ability to provide oral evidence or present his or her claims at a hearing. It is important that consideration be given to the circumstances of each case to ensure that as far as possible the hearing is conducted in a way that facilitates the taking of evidence and the opportunity for the applicant to present his or her case.
21. Members need to be mindful of the difficulties of assessing oral evidence provided through an interpreter.
22. Members need to be mindful that a person may be anxious or nervous due to the environment of a hearing and the significance of the outcome. A person from a different social and cultural environment may experience bewilderment and anxiety. The educational, social and cultural background of a person may affect the manner in which a person provides his or her evidence and the depth of understanding of particular concepts. A person may have had traumatic experiences or be suffering from a disorder or illness which may affect his or her ability to give evidence, his or her memory or ability to observe and recall specific events or details. There may also be mistrust in speaking freely to people in positions of authority.
23. If a person is in immigration detention, the tribunal should be aware of the effect immigration detention may have on the mental and emotional state of such a person and the impact this may have on their ability to give evidence at a hearing.

24. All claims, particularly those of a sensitive nature should be carefully considered in a respectful and culturally sensitive way. Claims relating to a person's sexual orientation or to sexual assault or domestic violence, require particularly sensitive investigation. The tribunal should consider who is present at the time the evidence is to be given and whether it would be appropriate for an interpreter of a particular gender to assist with the hearing.
25. The tribunal should be mindful that an applicant may find it particularly difficult or embarrassing to discuss claims relation to his or her sexual orientation.<sup>11</sup>
26. The tribunal should exercise special care when taking evidence from children to ensure that the tribunal's questions are understood and to make allowances for their age and the effect on them of an appearance before the tribunal, whether they have adult support and any inability to answer questions.

## **Contradictions, inconsistencies and omissions**

27. Contradictions, inconsistencies and omissions may arise in the evidence before the tribunal. The tribunal will consider all the evidence before it to assess whether contradictions or inconsistencies are material to an applicant's claims and would lead to an adverse credibility finding.
28. When forming a view on the credibility of claims, the tribunal should consider the overall consistency and coherence of an applicant's account.
29. Traumatic experiences including torture may impact upon a number of aspects of an applicant's case including the timeliness of an application, compliance with immigration laws, or the consistency of statements since arrival in Australia. They may also impact adversely on an applicant's capacity in providing testimony of such events.
30. There may be differences in evidence about the same event if provided by two or more persons. Such differences may be due to an individual's ability to recall an event and the emphasis and perspective placed on particular aspects of an event. The tribunal should be mindful of these differences when assessing credibility.

A person may not be able to remember all the details of his or her personal history or reconstruct the chronological order of particular events. A person may remember events that affected him or her most in emotional or physical terms but not the time sequence. Such confusion and forgetfulness do not necessarily imply that a person is not telling the truth. However, contradictions, inconsistencies and omissions in evidence may, although not necessarily, mean that a person's evidence is unreliable and, therefore, lacks credibility. The lack of credibility of a person's account because it is unreliable does not necessarily imply that the person is dishonest.

31. A person may forget dates, locations, distances, events and personal experiences due to lapse of time or other reasons. A person may not reveal the whole of his or her story

because of feelings of shame, for fear of endangering relatives or friends or because of mistrust of persons in positions of authority.

32. The tribunal may doubt part of a person's evidence if a person's testimony is incoherent or vague or lacks the detail or knowledge where greater detail or knowledge might be expected of a person in the person's claimed position or from the person's social or cultural background. For example, the tribunal is entitled to have regard to an applicant's level of knowledge of matters about which the applicant would reasonably be expected to know if his or her claims were truthful.<sup>12</sup>
33. The tribunal should be mindful not to impose too high a standard when assessing an individual person's level of knowledge. The tribunal should not require a person to provide an unrealistic degree of precision and detail in statements if this knowledge would not be expected of a person in the position claimed by a person.

## **Demeanour**

34. The tribunal should exercise care if it makes adverse credibility findings based on demeanour. A person's demeanour may be affected by any number of factors and circumstances set out in this paper. The tribunal should also be aware of the effect of cultural differences on demeanour and oral communication. The tribunal should exercise particular care if it relies on demeanour in circumstances where a person provides oral evidence through an interpreter or where a person is not before the tribunal and can only be observed via a video-link.<sup>13</sup>
35. If demeanour has formed a basis for an adverse assessment of a person's credibility, the tribunal should clearly explain the evidence on which this finding is based.

## **Delay in making an application for protection**

36. The period of time that has elapsed between an applicant's arrival in Australia and the time when he or she claims protection may be considered when assessing the genuineness or extent of an applicant's subjective fear of persecution<sup>14</sup> or significant harm.
37. A delay in applying for protection should not be the sole reason for doubting an applicant's claims. There should be other reasons to support a finding that an applicant's claims are not credible.<sup>15</sup> The significance of delay will depend upon the particular circumstances surrounding the delay and the reasons given for the delay.

## **Expert evidence**

38. The tribunal will have due regard to information which assists the tribunal to reach the correct or preferable decision, including expert evidence, information about conditions and laws in an applicant's country of origin and other relevant sources of information.

39. Evidence may be submitted to the tribunal by persons with a particular expertise in a particular subject area. Such evidence is generally submitted in the form of written reports. The person's expertise may be in medical, psychological, academic, scientific, technical or other related areas. Experts are persons who are appropriately qualified to provide informed comment and opinions on a relevant matter, whether by formal qualifications or by practical experience in a particular area.
40. The tribunal expects an expert to give objective, unbiased opinion in relation to matters within his or her expertise. An expert should state the facts or assumptions upon which his or her opinion is based.
41. The tribunal will have due regard to expert opinion and the basis upon which an expert has reached an opinion, including the use of clinical diagnostic criteria, the number and frequency of consultations and relevant experience.
42. It is the tribunal's task, as the decision-maker, to weigh each piece of evidence and make appropriate findings of fact. The tribunal should not substitute its own lay opinion for that of a reliable expert. If the tribunal does not accept the conclusions or opinion of an expert or the information upon which the opinion is based, the tribunal must provide clear reasons for the basis of the decision not to accept the evidence.

## **Documentary evidence**

43. The tribunal should assess the significance of documents submitted to the tribunal and whether the authenticity of such documents is material to an applicant's claims. There may be various consequences for an applicant in meeting the visa requirements if the tribunal finds that the applicant has submitted false or bogus documents.
44. The tribunal may seek advice from the department or other sources on the authenticity of documents.
45. In some cases, it may be appropriate for the tribunal to form its own view on the authenticity of documents. The tribunal may have regard to factors such as the appearance, language or content of a document; anomalies with respect to dates in the document; the likelihood of the document coming into existence in the way claimed by an applicant; the timing of the production of the document to the tribunal; oral evidence provided in relation to the document; and evidence of fraud in relation to documentary material from a particular country or source.<sup>16</sup> An applicant's overall lack of credibility may affect the weight given to a document produced by an applicant.<sup>17</sup> It is also possible that doubts about further documentary evidence submitted by an applicant may be raised if the applicant has previously submitted false documents with an application.
46. The use of false documents does not necessarily mean that an applicant's claims are untrue.



47. If the tribunal is of the view that a submitted document is not genuine, and the document is material to an applicant's claims, the tribunal should give the applicant an opportunity to address the tribunal's concerns.
48. For protection visa matters, except in certain circumstances the tribunal must refuse to grant a protection visa if the applicant has provided a bogus document as evidence of the applicant's identity, nationality or citizenship, or has destroyed documentary evidence of their identity, nationality or citizenship. The tribunal does not have to refuse the visa if it is satisfied that the applicant has a reasonable explanation for providing the bogus document or destroying the documentary evidence and the applicant either provides, or has taken reasonable steps to provide, documentary evidence of their identity, nationality or citizenship.
49. Where the tribunal rejects the authenticity of a document submitted by an applicant, the tribunal should provide reasons for its finding that a document is not genuine.

## **Conclusion**

50. The assessment of credibility is an important and difficult aspect of the tribunal decision-making process. The tribunal must maintain an open mind when assessing individual cases and when deciding whether an applicant's evidence is to be believed and how much weight is to be given to the evidence before the tribunal. The tribunal should be mindful of the issues raised in this paper when undertaking an assessment of the credibility of an applicant's claims.
51. It is hoped that the contents of this paper will be well understood and made use of by members, Applicants and representatives. Recognition of the diverse range of factors that influence a person's evidence and its assessment will benefit everyone involved in the review process.

## Endnotes

1. Subsections 353(2) and 420(2) of the Migration Act 1958 (Cth).
2. *Chand v Minister for Immigration and Ethnic Affairs* (unreported, Federal Court of Australia, von Doussa, Moore and Sackville JJ, 7 November 1997); *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220 per Sackville J, with whom North J agreed, at [50]; *Sein v Minister for Immigration and Multicultural Affairs* (2001) 114 FCR 370.
3. *Minister for Immigration and Ethnic Affairs v Guo* (1997) 191 CLR 559; *Rajasundaram v Minister for Immigration and Multicultural Affairs* (1999) 51 ALD 682; and *Minister for Immigration and Multicultural Affairs v Rajalingam* (1999) 93 FCR 220.
4. *Abebe v The Commonwealth* (1999) 197 CLR 510 per Gummow and Hayne JJ at [192] and Kirby J at [211].
5. *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) 34 ALD 347 at 348.
6. Subsection 423A of the Migration Act 1958 (Cth).
7. Subject to certain exceptions, the Tribunal must provide an Applicant with an opportunity to appear before the Tribunal to give evidence and present arguments relating to the issues arising in relation to the decision under review if it is unable to reach a favourable decision on the basis of the material before the Tribunal and provide an Applicant with an opportunity to comment on information that would form the reason, or part of the reason, for affirming the decision under review: sections 359A, 360, 424A and 425 of the Migration Act 1958 (Cth).
8. *Durairajasingham v Minister for Immigration and Ethnic Affairs* (1997) 50 ALD 469 at 475.
9. *WACO v Minister for Immigration, Multicultural and Indigenous Affairs* [2003] 131 FCR 511 per Lee, Hill and Carr JJ at [33]; *Kioa v West* (1985) 159 CLR 550.
10. *Re Refugee Review Tribunal; Ex parte H* (2001) 179 CLR 425 per Gleeson CJ, Gaudron and Gummow JJ at [32].
11. *WAIH v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FMCA 40 per Raphael FM at [23].
12. *Nejad v Minister for Immigration and Multicultural Affairs* [1999] FCA 1827 per Tamberlin J at [9], upheld on appeal, *Nejad v Minister for Immigration and Multicultural Affairs* [2000] FCA 741; *Wang v Minister for Immigration and Multicultural Affairs* [2000] FCA 963 per Goldberg J at [20] to [23]; “T” v *Minister for Immigration and Multicultural Affairs* [2000] FCA 467 per Drummond, Matthews and Mansfield JJ at [27] to [47].
13. *WAEJ v Minister for Immigration and Multicultural and Indigenous Affairs* [2003] FCAFC 188 per Lee, Hill and Marshall JJ at [17] and [18].
14. *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) ALD 346 per Heerey J at 349.
15. *Selvadurai v Minister for Immigration and Ethnic Affairs* (1994) ALD 346; *Anandaraj Subramanian v Minister for Immigration and Multicultural Affairs*, unreported, Federal Court of Australia, Carr J, 10 March 1998; *Makouei v MIMA*, unreported, Federal Court of Australia, Wilcox J, 6 February 1998, at 6.

16. See *Minister for Immigration and Multicultural Affairs v Shatku* [2001] FCA 1857; *SZDWI v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FMCA 837; *WAJR v Minister for Immigration and Multicultural and Indigenous Affairs* (2004) 204 ALR 624; *SZBGG v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FMCA 59; *MZWIT v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FMCA 712 at [20].

17. *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002; Appellant S106 of 2002 v Minister for Immigration and Multicultural Affairs* (2003) 198 ALR 59.